

FILED

2008 FEB 15 PM 1:41

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY LANE,
Petitioner,
vs.
JAMES HARLEY,
Respondent.

Civil No. 08-0213 BEN (AJB)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION PURSUANT
TO 28 U.S.C. § 2244(b)(3)(A)
GATEKEEPER PROVISION**

Petitioner, Michael Anthony Lane, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a copy of his prison trust account statement, which this Court construes as a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his July 17, 2003 conviction in San Diego Superior Court case No. SCD 171751. September 19, 2005, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case no. 05cv1816. In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SCD 171751 as well. On September 26, 2006, this Court denied the petition on the merits. (See Order filed Sept. 26, 2006 in case no. 05cv1816 IEG (BLM) [Doc. No. 25].) Petitioner appealed that determination. On July 2, 2007, the Ninth

1 Circuit Court of Appeals denied Petitioner's request for certificate of appealability. (See Order
2 in *Lane v. Muntz*, No. 06-56448 (9th Cir. July 2, 2007).)

3 Petitioner is now seeking to challenge the same conviction he challenged in his prior
4 federal habeas petition. Unless a petitioner shows he or she has obtained an Order from the
5 appropriate court of appeals authorizing the district court to consider a successive petition, the
6 petition may not be filed in the district court. See 28 U.S.C. § 2244(b)(3)(A). Here, there is no
7 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive
8 petition.

9 **CONCLUSION**

10 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
11 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
12 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
13 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. *For*
14 *Petitioner's convenience, the Clerk of Court shall attach to this Order, a blank Ninth Circuit*
15 *Application for Leave to File Second or Successive Petition.*

16 **IT IS SO ORDERED.**

17 DATED: 2/17/07

18 
19 Roger T. Benitez
20 United States District Judge
21
22
23
24
25
26
27
28